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Election of judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Fifty-eighth year

Identical letters dated 16 April 2003 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I am attaching for your consideration and for the consideration of the members of the General Assembly and of the Security Council a letter, dated 26 March 2003 from the President of the International Tribunal for Rwanda, Judge Navanethem Pillay (see annex).

In her letter, President Pillay requests extensions of the term of office of four non-elected permanent judges of the International Tribunal in order to allow them to dispose of a number of ongoing cases. These requests raise institutional and budgetary questions pertaining to the status of a judge beyond his or her elected term of office and to related financial arrangements.

You may recall that the term of office of 11 of the permanent judges who are currently serving in the Chambers of the International Tribunal for Rwanda will expire on 24 May 2003. You may also recall that, on 31 January 2003, the General Assembly conducted elections for 11 permanent judges of the International Tribunal for Rwanda for a four-year term of office commencing on 25 May 2003. At those elections, four permanent judges who are currently serving in the Tribunal were not elected to a new term of office. As matters stand, they will therefore cease to be permanent judges of the International Tribunal for Rwanda on 24 May 2003.

All four of the permanent judges concerned are currently adjudicating in cases before the Tribunal which will continue beyond that date. With one exception, proceedings in the cases in question are well advanced. If the judges concerned were not allowed to continue to adjudicate in those cases, it would be necessary to start

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the trials anew with fresh panels of judges and to order the rehearing of witnesses and the representation of arguments. This would have unfortunate legal and financial consequences, cause serious prejudice to the accused and have a significant negative impact on the Tribunal's completion strategy.

The Statute of the International Tribunal for Rwanda does not contain a provision similar to Article 13, paragraph 3, of the Statute of the International Court of Justice, whereby judges of that Court continue to discharge their duties until they are replaced and, thereafter, until they finish any cases which they may have begun. It is provided in article 12 bis, paragraph 3, of the Statute of the International Tribunal for Rwanda that the terms and conditions of service of permanent judges of the Tribunal shall be those of the permanent judges of the International Tribunal for the Former Yugoslavia. Article 13 bis, paragraph 3, of the Statute of that Tribunal provides, in turn, that the terms and conditions of service of the permanent judges of the International Tribunal for the Former Yugoslavia shall be those of the judges of the International Court of Justice. Nevertheless, in the absence of any explicit provision in the Statute of the International Tribunal for Rwanda providing for the extension of the term of office of permanent judges of the Tribunal in order to allow them to complete ongoing cases, an approval of the Security Council, as the parent organ of the Tribunal, and of the General Assembly, as the organ which elects its judges, would be highly desirable in order to preclude any question being raised regarding the legality of such an extension.

As more fully elaborated in President Pillay's letter, her requests are as follows.

She requests that the terms of office of both Judge Pavel Dolenc and Judge Yakov Arkadyevich Ostrovsky be extended so that they might finish the *Cyangugu* case. She estimates that, for that purpose, it would be necessary to extend their term of office for an additional nine months.

She also requests that the term of office of Judge Winston Churchill Matanzima Maqutu be extended so that he might finish the *Kajelijeli*, *Kamuhanda* and *Butare* cases. She estimates that, for that purpose, it would be necessary to extend Judge Maqutu's term of office for a total of two years and seven months.

She further requests that her own term of office be extended, so that she might finish the "*Media*" case. She estimates that it would be necessary to extend her term of office for seven months for that purpose.

In connection with the first of these requests, President Pillay notes that, on 31 January 2003, the General Assembly elected Judge Serguei Alekseievich Egorov, a national of the Russian Federation, as a permanent judge of the International Tribunal for Rwanda for a four-year term of office commencing 25 May 2003. Judge Ostrovsky is also a national of the Russian Federation. If Judge Ostrovsky's term of office were to be extended, as requested, there would therefore be two permanent judges who were nationals of the same State serving concurrently in the Tribunal. She recalls in this regard that article 11, paragraph 1, of the Statute of the International Tribunal for Rwanda provides that no two permanent judges of the Tribunal may be nationals of the same State. She nevertheless requests that, in the particular circumstances of the present case, Judge Ostrovsky's term of office be extended, notwithstanding that provision of the Tribunal's Statute.

President Pillay also notes that, on 4 February 2003, she was herself elected a judge of the International Criminal Court by the Assembly of States Parties to the Rome Statute of the International Criminal Court. Her term of office as a judge of that Court commenced on 11 March 2003. She recalls in this connection that, pursuant to paragraph 3 of article 12 bis of the Statute of the International Tribunal for Rwanda, permanent judges of the Tribunal are required to serve on a full-time basis and so may not engage in any other occupation of a professional nature during their tenure in office. At the same time, she notes that she is not currently engaged in any substantive work as a judge of the International Criminal Court and that she will not be so engaged during the period of time that would be required for her to complete the "*Media*" case. She is therefore available to continue serving as a permanent judge of the Tribunal during that time on a full-time basis. This being so, she does not consider her status as a judge of the International Criminal Court to be inconsistent in any way with article 12 bis, paragraph 3, of the Statute of the International Tribunal for Rwanda. She states that she has brought this matter to the attention both of the Bureau of the Tribunal and of the other two judges who are sitting with her on the "*Media*" case and that they concur in this assessment. She therefore does not consider article 12 bis, paragraph 3, of the Statute to pose an obstacle to the extension of her term of office.

The Registry of the International Tribunal has advised me that the budgetary costs associated with the extension of the four judges' terms of office are estimated to be US$ 1,893,800. The Registry has also advised me that it is envisaged that the Tribunal may be able to meet the estimated costs related to the year 2003 in the amount of $858,000 from within the 2002-2003 appropriation adopted for the Tribunal by the General Assembly in its resolution 57/289 of 20 December 2002. With respect to the estimated costs for the biennium 2004-2005 in the amount of $1,035,000, these will be taken into account in preparing the budget proposals for the Tribunal for the biennium 2004-2005.

I should be most grateful if you could bring the present letter and its annex to the attention of the members of the General Assembly and of the Security Council for their approval in the manner that they deem fit.

(*Signed*) Kofi A. Annan

Annex

Letter dated 26 March 2003 from the President of the International Tribunal for Rwanda addressed to the Secretary-General

I am writing to you with regard to the extension of the terms of office of the following judges of the International Tribunal for Rwanda: Judge Pavel Dolenc, Judge Winston Churchill M. Maqutu, Judge Yakov Ostrovsky and myself, Judge Navanethem Pillay, so that they can complete cases which they have already begun and which will not be completed by the time that their terms of office come to an end on 24 May 2003. I respectfully request that you transmit this letter to the President of the Security Council and the President of the General Assembly, for consideration of this matter by those two bodies.

The election of the judges of the International Tribunal for Rwanda took place on 31 January 2003. Judge Ostrovsky and Judge Pillay did not stand for re-election. Judge Dolenc and Judge Maqutu were not re-elected. Although the terms of office of these judges will therefore come to an end on 24 May 2003, the Rules of the Tribunal place an obligation on a judge to complete the case/s in which he or she is involved. All four judges are currently sitting on cases that will not be completed by 24 May 2003. For this reason, we request the Security Council and the General Assembly to extend the terms of office of the judges concerned in order to allow them to complete the cases described below.

As envisioned by the Rules of the Tribunal, the continuation of ongoing cases is both more cost-effective and more compatible with the principles of fair trial than the alternative of commencing de novo trials that have reached an advanced stage. In addition to the unfortunate legal and financial consequences, and serious prejudice to the accused, commencing all affected trials de novo would have the detrimental effect of pushing the completion of the mandate of the Tribunal far beyond its projected date. I note that under similar circumstances, the Security Council has authorized the extension of judges' mandates, both for the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, to allow them to complete their work.

Judge Dolenc

I request an extension of Judge Dolenc's term of office until the completion of the *Cyangugu* case,[a] currently estimated to finish by the end of February 2004. In this joint trial of three accused, the prosecution and two of the accused have completed the presentation of their respective cases. The third accused is in the process of presenting his case. He has indicated that he will be calling 16 witnesses and will also testify in his own defence. The prosecution has indicated its intention to present rebuttal evidence and there is always the possibility of the defence requesting leave to present evidence in rejoinder. The presentation of evidence in this case and the closing arguments are likely to be completed in the second half of this year. It is the intention of the Trial Chamber to deliver judgement in February 2004.

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[a] *The prosecutor v. André Ntagerura* (ICTR-96-10-T), *Emmanuel Bagambiki and Samuel Imanishimwe* (ICTR-97-36-T).

Judge Dolenc is also sitting on the "*Military*" case.[b] In this case, the trial proceedings commenced recently and only two witnesses have been heard for the prosecution. It is contemplated that hundreds of witnesses will testify and that the trial will continue for more than two years. In consultation with the Bureau, I have determined that it would be significantly more cost-effective, and not incompatible with the interests of justice, for this trial to recommence with a new panel of judges. For this reason, I am not requesting an extension of Judge Dolenc's mandate for this case.

Judge Ostrovsky

I request an extension of Judge Ostrovksy's term of office until the completion of the *Cyangugu* case. The details of the status of this case, on which Judge Dolenc also sits, are set forth above in connection with the request for extension of Judge Dolenc's term. The case is currently estimated to finish by the end of February 2004.

In connection with this request for an extension of Judge Ostrovsky's term of office, I note that another judge from the Russian Federation, Judge Serguei Aleckseievich Egorov, has been elected to serve on the International Tribunal for Rwanda. Article 11, paragraph 1, of the Statute of the Tribunal provides that no two judges may be nationals of the same State. However, in the light of the particular circumstances, including the obligation under the Rules for Judge Ostrovsky to complete the case and the short duration of the extension required to do so, I request the Security Council and the General Assembly to extend Judge Ostrovsky's term of office until the completion of the *Cyangugu* case, on an exceptional basis notwithstanding the above-cited provision of article 11 of the Statute of the Tribunal.

Judge Maqutu

I request an extension of Judge Maqutu's term of office until the completion of the *Kajelijeli*,[c] *Kamuhanda*,[d] and *Butare*[e] cases, the longest of which is currently estimated to finish in December 2005. The progress of trial in these cases can be summed up as follows:

The Kajelijeli *case*

This trial of a single accused commenced de novo on 4 July 2001.[f] Fourteen witnesses have testified for the prosecution and the defence case is now in progress. Twenty-four defence witnesses have already testified and a further five witnesses, including three experts, are expected to testify between 31 March and 24 April 2003. The Prosecutor may thereafter lead rebuttal evidence. Closing arguments are

[b] *The Prosecutor v. Theoneste Bagosora* (ICTR-96-7-T), *Gratien Kabiligi, Aloys Ntabakuze* (ICTR-97-34-T) *and Anatole Nsengiyumva* (ICTR-96-12-T).

[c] *The Prosecutor v. Juvénal Kajelijeli* (ICTR-98-44-T).

[d] *The Prosecutor v. Jean-de-Dieu Kamuhanda* (ICTR-99-54-T).

[e] *The Prosecutor v. Joseph Kanyabashi* (ICTR-96-15-T); *Pauline Nyiramasuhuko and Arsène Shalom Ntahobali* (ICTR-97-21-T); *Sylvain Nsabimana and Alphonse Nteziryayo* (ICTR-29-T); *and Elie Ndayambaje* (ICTR-96-8-T).

[f] The trial originally commenced on 13 March 2001 and subsequently commenced de novo on 4 July 2001 because of the death of Judge Laity Kama on 6 May 2001 and the assignment of Judge Mehmet Güney to the Appeals Chamber.

expected to be heard at the end of May or in early June 2003, and the Trial Chamber expects to render judgement in December 2003.

The Kamuhanda *case*

This trial of a single accused commenced de novo on 3 September 2001.[a] Twenty-eight witnesses have testified for the prosecution and the defence is now presenting its case. Thirty witnesses have already testified and a further five witnesses are expected to testify between 28 April and 22 May 2003, which should complete the presentation of the defence case. The prosecution may present rebuttal evidence, four witnesses who are expected to testify over a period of five days. Closing arguments are expected to be heard in September 2003 and judgement is expected to be delivered in December 2003.

The Butare *case*

This joint trial of six accused commenced on 12 June 2001. Twenty-three prosecution witnesses have testified over a period of 104 days. Sixty-seven factual witnesses and four expert witnesses are expected to testify before the prosecution closes its case. Trial in this case is being conducted contemporaneously with trials in the *Kamuhanda* and *Kajelijeli* cases. On completion of trials in the latter two cases, Trial Chamber II will concentrate solely on the trial in the *Butare* case and not commence with other trials for the duration of this trial. It is expected that this trial will be completed in August 2005 and judgement rendered in December 2005.

Judge Pillay

I request an extension of my term of office until the completion of the "*Media*" case,[b] currently estimated to finish no later than the end of 2003. The joint trial of the three accused in the "*Media*" case commenced on 23 October 2000. The prosecution closed its case on 12 July 2002, after 47 witnesses testified. The defence commenced its case on 18 September 2002. Forty witnesses have testified. Nine more factual witnesses and six expert witnesses are expected to testify before the three defence teams close their respective cases. Trial proceedings are scheduled to finish by the end of May 2003. Closing arguments are scheduled to be heard in August 2003, and it is anticipated that judgement will be delivered by December 2003.

I have been elected as a judge of the International Criminal Court and my term of office as such commenced on 11 March 2003. I have been assigned to the Appeals Chamber of the Court and will not occupy a full-time position until the workload of the Chamber so requires. I am not currently and will not be engaged in any substantive judicial work for the Court during the period of time required to finish the "*Media*" case. I am therefore available to continue serving as a Judge of the International Tribunal for Rwanda on a full-time basis. I consider that my status as a judge of the International Criminal Court is not inconsistent with article 12 bis (3) of the Statute of the Tribunal. The Bureau, as well as the two other judges

[a] The trial originally commenced on 17 April 2001 and subsequently commenced de novo on 3 September 2001 because of the death of Judge Laity Kama on 6 May 2001 and the assignment of Judge Mehmet Güney to the Appeals Chamber.

[b] *Prosecutor v. Jean Bosco Barayagwiza* (ICTR-97-19-T), *Ferdinand Nahimana* (ICTR-96-11-T) *and Hassan Ngeze* (ICTR-97-27-T).

serving with me on the "*Media*" case, have been consulted and all concur with this view. For the duration of my service on the Tribunal, I have undertaken to waive the annual allowance due to me from the International Criminal Court.

Budgetary consequences

I have requested the Registrar, Mr. Adama Dieng, to submit to you as soon as possible, in consultation with the Controller, an estimate of the financial implications arising from the extension of the terms of office of the four judges, based on the current projections of the case schedules set forth herein. This will place you in a position to inform the Security Council and General Assembly of the budgetary consequences of our requests.

(*Signed*) Judge Navanethem Pillay